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APPLICATION NO.	1	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,768		11/30/2001	Hideo Suzuki	393032001901	2094
25224	7590	06/16/2004		EXAMINER	
MORRISO	N & FO	ERSTER, LLP	FLETCHER, MARLON T		
555 WEST FIFTH STREET SUITE 3500				ART UNIT	PAPER NUMBER
		90013-1024		2837	
				DATE MAILED: 06/16/2004	

Please find below and/or attached an Office communication concerning this application or proceeding.

				/8				
		Applicati n N .	Applicant(s)	•				
		10/008,768	SUZUKI ET AL.					
Office Action Summary		Examin r	Art Unit					
		Marion T Fletcher	2837					
Period fo	The MAILING DATE of this communication app or Reply	pears on the cover sheet with the c	orrespondence addr	ess				
THE - External control	MORTENED STATUTORY PERIOD FOR REPLY MAILING DATE OF THIS COMMUNICATION. ensions of time may be available under the provisions of 37 CFR 1.13 or SIX (6) MONTHS from the mailing date of this communication. e period for reply specified above is less than thirty (30) days, a reply operiod for reply is specified above, the maximum statutory period of the provision o	36(a). In no event, however, may a reply be tin y within the statutory minimum of thirty (30) day vill apply and will expire SIX (6) MONTHS from , cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this common (35 U.S.C. § 133).	munication.				
Status								
1)[  ]	Responsive to communication(s) filed on 02 Ap	pril 2004.						
		action is non-final.						
,	Since this application is in condition for allowar		secution as to the n	nerits is				
,—	53 O.G. 213.							
Disposit	ion of Claims							
4)🖂	Claim(s) 14 and 16-25 is/are pending in the ap	plication.						
,	4a) Of the above claim(s) is/are withdrawn from consideration.							
5)	Claim(s) is/are allowed.							
6)⊠	Claim(s) 14 and 16-25 is/are rejected.							
	Claim(s) is/are objected to.							
	Claim(s) are subject to restriction and/or election requirement.							
Applicat	ion Papers							
9)[]	The specification is objected to by the Examine	r.						
	10) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.							
,	Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).							
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).							
11)	11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.							
	under 35 U.S.C. § 119							
_	•	priority under 05 11 0 0 0 440( )	(d) on (f)					
	Acknowledgment is made of a claim for foreign ⊠ All b) Some * c) None of:	priority under 35 U.S.C. § 119(a)	-(a) or (t).					
a)	<i>;</i> _	a bassa bassa sa sa ta d						
	1. Certified copies of the priority documents							
	2. Certified copies of the priority documents	• •						
	3. Copies of the certified copies of the prior		d in this National St	age				
* 0	application from the International Bureau	· · · · · · · · · · · · · · · · · · ·						
* See the attached detailed Office action for a list of the certified copies not received.								
Attachmen		🗖						
	ce of References Cited (PTO-892) ce of Draftsperson's Patent Drawing Review (PTO-948)	4) Ll Interview Summary Paper No(s)/Mail Da						
	mation Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) 🔲 Notice of Informal Page 1		52)				
	er No(s)/Mail Date <u>02/06/2004</u> .	6)  Other:						

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#### **DETAILED ACTION**

#### Terminal Disclaimer

1. The terminal disclaimer filed on 02/08/2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of Patent 6,452,082 has been reviewed and is accepted. The terminal disclaimer has been recorded.

## Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 2. Claims 14, 16, 17, and 21-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Serra et al. (5,536,902).

As recited in claim 14, Serra et al. disclose a method of processing musical performance data, comprising the steps of: receiving via input (12) a sequence of pieces of musical performance data represented by a sequence of musical notes; designating via interface (15) a performance method for each of the received pieces of musical performance data by a player in real time; and forming musical tone data by attaching performance method data indicative of the designated performance method to said each of the received pieces of musical performance data (column 13, lines 39-51 and column 14, lines 51-60).

As recited in claim 16, Serra et al. disclose a method of forming musical tone waveform data, comprising the steps of: reproducing musical performance data (column 13, lines 29-33); generating performance method data indicative of a performance method as the reproduction of said musical performance data (column 13, lines 39-48); and forming musical tone waveform data based on said musical performance data and said performance method data (column 13, lines 48-51).

As recited in claims 17 and 24, Serra et al. disclose a method, wherein said generation of performance method data is carried out based on a performance method designated by a player in real time, and said formation of musical tone waveform data is carried out by attaching said performance method data to said musical performance data (column 9, lines 7-17 and column 14, lines 56-61).

As recited in claim 21, Serra et al. disclose a method of making a medium which stores data prepared using the steps of: analyzing (analysis 10) a progression manner of at least one note in musical performance data; decomposing said musical performance data into a plurality of pieces according to results of said analyzing (column 10, lines 3-56); determining a performance method for each of said plurality of pieces, which is to be applied in performing each of said. plurality of pieces (column 12, lines 29-54); providing a storage medium (100); and storing data representative of said determined performance method for each of said plurality of pieces in the storage medium (column 10, lines 57-60).

As recited in claim 22, Serra et al. disclose a method of making a medium which stores data prepared using the steps of: selecting tone color data for musical

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performance data (column 8, lines 44-47); analyzing (10) at least one piece of said musical performance data in a manner corresponding to the selected tone color data; forming musical tone data by attaching performance method data indicative of a performance method corresponding to a result of said analyzing to said musical performance data (column 13, lines 39-51 and column 14, lines 51-60); providing a storage medium (100); and storing data representative of said formed musical tone data in the storage medium (column 10, lines 57-60).

As recited in claim 23, Serra et al. disclose a method of making a medium which stores data prepared using the steps of: reproducing musical performance data (column 13, lines 29-33); generating performance method data indicative of a performance method during the reproduction of said musical performance data (column 13, lines 39-48); forming musical tone waveform data based on said musical performance data and said performance method data (column 13, lines 48-51); providing a storage medium (100); and storing data representative of said formed musical tone waveform data in the storage medium (column 10, lines 57-60).

### Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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4. Claims 18-20 and 25, are rejected under 35 U.S.C. 103(a) as being unpatentable over Serra et al. in view of Kellogg et al. (4,930,390) and Kakishita et al. (5,591,930).

As recited in claims 18 and 25, Serra et al. disclose a method of generating musical tones, comprising the steps of: selecting at least one tone color for a musical piece (column 8, lines 44-47); and generating musical tones in accordance with the selected performance method (column 13, lines 39-51).

As recited in claim 19, Serra et al. disclose a method, wherein said selection is made by a user (column 9, lines 21-33 and column 14, lines 51-60).

As recited in claim 20, Serra et al. disclose a method, wherein a desired performance method is selected from the displayed performance methods by using a switch (column 9, lines 21-26).

Serra et al. do not disclose displaying the performance method.

However, Kellogg et al. disclose displaying performance parameters to be selected for varying a performance (figures 7A & 7B). Kakishita et al. disclose methods to be selected corresponding to each of the selected tone colors on a display, wherein one of the displayed performance methods can be selected (figures 3, 4, & 9).

It would have been obvious to one of ordinary skill in the art at the time of the invention to utilize the teachings of Kellogg et al. and Kakishita et al. with the apparatus of Serra et al., because enhancement is provided, wherein the selection of performance methods can be made from a visual display.

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## Response to Arguments

5. Applicant's arguments filed 04/02/2004 have been fully considered but they are not persuasive.

The applicants argue that Serra does not disclose the claimed invention. "The present invention is to a tone generating method .... The invention allows performance method codes to be assigned to performance information." The applicants further state that Serra merely analyzes data in time frames. However, the examiner's position is that the data represented by the time frames, is performance data. As stated in the rejection above, performance methods which allow the user to control the performance data, are selected by the user, wherein the performance data is provided in a sequence of pieces of a performance. As for the use of performance codes, this limitation is not recited in the claims. The performance methods of Serra as discussed above, include vibrato and tremolo. The applicants argued that Kellogg do not disclose displaying performance methods such as glissando, tremolo, etc. However, Serra provides performance methods such as glissando, tremolo, etc. In view of Kellogg, it would be obvious to provide a display of glissando, tremolo, etc. Further the claims do recite that the performance methods are one such as glissando, tremolo, etc. The claims are interpreted in the broadest manner possible. Based on the claimed subject matter, the examiner believes the above rejection meets the claim limitations.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

than SIX MONTHS from the mailing date of this final action.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on 571-272-2107. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

rimary Examiner

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MTF June 13, 2004